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ALLIANCE FOR THE WILD  
ROCKIES,

Plaintiff,

v.

UNITED STATES ARMY CORPS OF  
ENGINEERS, UNITED STATES  
BUREAU OF RECLAMATION, and  
BONNEVILLE POWER  
ADMINISTRATION.

Defendants.

Cause No. 3:16-cv-1407

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

## I. NATURE OF ACTION

1. On October 18, 2010, the United States Fish and Wildlife Service posted the “Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for Bull Trout in the Coterminous United States: Final Rule” in the *Federal Register* (“Final Rule”). 75 Fed. Reg. 63898 (October 18, 2010). The Final Rule designated bull trout critical habitat in certain portions of rivers across Montana, Idaho, Nevada, Oregon and Washington.

2. Section 7 of the Endangered Species Act requires the United States Army Corps of Engineers, United States Bureau of Reclamation, and Bonneville Power Administration (“Action Agencies” or “Defendants”) to consult with the Fish and Wildlife Service to ensure its actions will not result in the destruction or adverse modification of bull trout critical habitat. 16 U.S.C. § 1536(a).

3. The continued operation and maintenance of certain of Defendants’ hydroelectric projects is in violation of the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.*, because Defendants failed to reinitiate and complete consultation regarding the effects of the operations of the hydroelectric projects on designated bull trout critical habitat.

4. Defendants continue to operate and maintain hydroelectric projects in waters designated as bull trout critical habitat, or continue to operate and maintain hydroelectric projects that effect waters designated as bull trout critical habitat.

5. Defendants have failed to protect and prevent adverse modification of certain rivers and streams designated as bull trout critical habitat.

6. One of the purposes of reinitiating and completing consultation is to ensure that continued operation and management of the hydroelectric projects operating in critical habitat and affecting critical habitat will not result in the destruction or adverse modification of the newly-designated critical habitat.



1 the northern Rockies bio-region; its native plant, fish, and animal life; and its naturally functioning  
2 ecosystems. Its registered office is located in Missoula, Montana. The Alliance has over 2,000  
3 individual members, many of whom are located in Idaho, Oregon and Washington. The Alliance  
4 brings this action on its own behalf and on behalf of its adversely affected members.

5  
6 13. Defendant United States Army Corps of Engineers is an administrative agency within  
7 the U.S. Department of Defense and is responsible for the lawful investigations, development and  
8 maintenance of the Nation's water and related environmental resources.

9  
10 14. Defendant United States Bureau of Reclamation is an administrative agency within the  
11 U.S. Department of Interior and is responsible for lawful management, development and protection of  
12 water and related resources in an environmentally and economically sound manner.

13  
14 15. Defendant Bonneville Power Administration is an administrative agency within the  
15 U.S. Department of Energy and is responsible for the marketing and sales of electrical power from  
16 hydroelectric projects identified in this complaint.

## 16 V. STATEMENT OF STANDING

17 16. The interests at stake in this matter are germane to Alliance's organizational purposes.  
18 Defendants' failure to reinitiate and complete consultation pursuant to the ESA threatens the  
19 preservation of the native biodiversity of the dams' areas of operation, including its native fish life and  
20 its naturally functioning ecosystems. That failure to reinitiate and complete consultation also threatens  
21 the conservation of fisheries resources on lands of the dams' areas of operation.

22  
23 17. Alliance and its members observe, enjoy, and appreciate native wildlife, water quality,  
24 and aquatic habitat quality of Defendants' hydroelectric project areas, and expect to continue to do so  
25 in the future. Members use and enjoy the waters and natural resources throughout areas affected by  
26 Defendants' dams for work, recreational, scientific, spiritual, educational, aesthetic, and other

1 purposes. Alliance's members enjoy fishing, hiking, camping, bird watching, study, contemplation,  
2 photography, and other activities in and around the waters and public lands affected by Defendants'  
3 dams. Alliance and its members also participate in information gathering and dissemination,  
4 education and public outreach, commenting upon proposed agency actions, and other activities  
5 relating to Defendants' management and administration of these public areas.  
6

7 18. Defendants' unlawful actions adversely affect Alliance's organizational interests, as  
8 well as its members' use and enjoyment of areas impacted by Defendants' dams. The interests of the  
9 Alliance and their members have been and will continue to be injured and harmed by the Defendants'  
10 actions and/or inactions as complained of herein, including Defendants' failure to reinitiate and  
11 complete consultation as required by the ESA. These decisions are particularly and directly harmful  
12 in that Defendants have failed to perform their duty to ensure through consultation that the continued  
13 operation and maintenance of the dams will not result in the destruction or adverse modification of  
14 bull trout critical habitat that was designated in October 2010. Unless the relief prayed for here is  
15 granted, Alliance and its members will continue to suffer ongoing and irreparable harm and injury to  
16 their interests.  
17

18 19. The injuries to Alliance and its members are likely to be redressed by a favorable  
19 decision of this Court because Alliance is seeking an order declaring that Defendants have violated  
20 the ESA and requiring that the Action Agencies reinitiate and complete consultation under the ESA.  
21 That would, in turn, ensure that the continued operation and maintenance of the hydroelectric projects  
22 would not result in the destruction or adverse modification of bull trout critical habitat.  
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## VI. FACTUAL ALLEGATIONS

20. Defendants United States Army Corps of Engineers, Bonneville Power Administration and United States Department of Interior Bureau of Reclamation operate and maintain hydroelectric projects within bull trout critical habitat and affecting bull trout critical habitat.

21. Defendants United States Army Corps of Engineers of own, operate and maintain hydroelectric projects including: Howard A. Hanson, Dexter, Cougar, Lookout Point, Hills Creek, Blue River, Fern Ridge, Libby, Dworshak, Lower Granite, Little Goose, Lower Monumental, Ice Harbor, McNary, John Day, The Dalles, Albeni Falls, Chief Joseph and Bonneville dams.

22. Howard A. Hanson, Dexter, Cougar, Lookout Point, Hills Creek, Blue River, Fern Ridge, Libby, Dworshak, Lower Granite, Little Goose, Lower Monumental, Ice Harbor, McNary, John Day, The Dalles, Albeni Falls, Chief Joseph and Bonneville dams are located in bull trout critical habitat or have an effect on tributaries designated as bull trout critical habitat.

23. In its response to Plaintiff's Notice of Intent to Sue, Defendant United States Army Corps of Engineers asserts that on February 14, 2015, a supplemental biological assessment regarding the operation and maintenance of Howard A. Hanson dam was submitted to USFWS and "formal consultation on ESA-listed species and designated bull trout critical habitat is currently ongoing."

24. A biological opinion has not been issued for Howard A. Hanson dam. The Howard A. Hanson dam continues to be operated by Defendant United States Army Corps of Engineers.

25. Defendant United States Army Corps of Engineers also alleges that it, along with Bonneville Power Administration and Bureau of Reclamation are "in the final stages of completing a biological assessment on the effects of operating and maintaining the . . . projects on designated bull trout critical habitat" for Dexter, Cougar, Green Peter, Lookout Point, Fall Creek, Cottage Grove, Hills Creek, Blue River, and Fern Ridge dams.

1           26.     Biological assessments have not been issued for Dexter, Cougar, Green Peter, Lookout  
2 Point, Fall Creek, Cottage Grove, Hills Creek, Blue River, and Fern Ridge dams, and the dams  
3 continue to be operated by Defendant United States Army Corps of Engineers.

4           27.     Defendants Army Corps of Engineers must reinitiate and complete consultation to  
5 ensure that continued operation of these dams does not adversely modify bull trout critical habitat.  
6

7           28.     Albeni Falls, Libby, Lower Monumental, Little Goose, Lower Granite, Ice Harbor,  
8 Dworshak, McNary, John Day, The Dalles, Bonneville, and Chief Joseph dams are managed by the  
9 Action Agencies as a coordinated system.

10          29.     Albeni Falls, Libby, Lower Monumental, Little Goose, Lower Granite, Ice Harbor,  
11 Dworshak, McNary, John Day, The Dalles, Bonneville, and Chief Joseph dams are located in bull  
12 trout critical habitat or have an effect on tributaries designated as bull trout critical habitat.  
13

14          30.     Defendant United States Army Corps of Engineers asserts that the Action Agencies  
15 “are currently conferring with USFWS on a biological assessment on the effects of the operation and  
16 maintenance of [the projects] on ESA-listed species” and plan to have the biological assessment  
17 submitted in the fall of 2016.

18          31.     Biological assessments have not been issued for Albeni Falls, Libby, Lower  
19 Monumental, Little Goose, Lower Granite, Ice Harbor, Dworshak, McNary, John Day, The Dalles,  
20 Bonneville, and Chief Joseph dams, and the dams continue to be operated by Defendants.  
21

22          32.     Following the designation of bull trout critical habitat in 2010, Defendants failed to  
23 reinitiate and complete ESA consultation for the continued operation and maintenance of their  
24 hydroelectric projects, including Dexter, Cougar, Lookout Point, Hills Creek, Blue River, Fern Ridge,  
25 Libby, Dworshak, Lower Granite, Little Goose, Lower Monumental, Ice Harbor, McNary, John Day,  
26 The Dalles, Albeni Falls, Chief Joseph, and Bonneville dams.

1           33. Defendant Bonneville Power Administration owns, operates and maintains  
2 hydroelectric projects, including Libby, Dworshak, Lower Granite, Little Goose, Lower Monumental,  
3 Ice Harbor, McNary, John Day, The Dalles, Hungry Horse, Albeni Falls, Grand Coulee, Chief Joseph,  
4 Bonneville, Cougar, Dexter, Lookout Point, Hills Creek, Blue River, and Fern Ridge dams.

5           34. Libby, Dworshak, Lower Granite, Little Goose, Lower Monumental, Ice Harbor,  
6 McNary, John Day, The Dalles, Hungry Horse, Albeni Falls, Grand Coulee, Chief Joseph, Bonneville,  
7 Cougar, Dexter, Lookout Point, Hills Creek, Blue River, and Fern Ridge dams are located in bull trout  
8 critical habitat or have an effect on tributaries designated as bull trout critical habitat.  
9

10           35. In its response to Plaintiff's Notice of Intent to Sue, Defendant Bonneville Power  
11 Administration asserts that the Action Agencies are currently consulting with United States Fish and  
12 Wildlife Service to complete a biological assessment addressing the effects of operation and  
13 maintenance of Libby, Dworshak, Lower Granite, Little Goose, Lower Monumental, Ice Harbor,  
14 McNary, John Day, The Dalles, Hungry Horse, Albeni Falls, Grand Coulee, Chief Joseph, Bonneville,  
15 Cougar, Dexter, Lookout Point, Hills Creek, Blue River, and Fern Ridge dams on bull trout critical  
16 habitat and expect to submit it in the fall of 2016.  
17

18           36. Biological assessments have not been submitted for Libby, Dworshak, Lower Granite,  
19 Little Goose, Lower Monumental, Ice Harbor, McNary, John Day, The Dalles, Hungry Horse, Albeni  
20 Falls, Grand Coulee, Chief Joseph, Bonneville, Cougar, Dexter, Lookout Point, Hills Creek, Blue  
21 River, and Fern Ridge dams, and the dams continue to be operated by Defendants.  
22

23           37. Following the designation of bull trout critical habitat in 2010, Defendant Bonneville  
24 Power Administration failed to reinitiate and complete consultation for the continued operation and  
25 maintenance of Libby, Dworshak, Lower Granite, Little Goose, Lower Monumental, Ice Harbor,  
26



1 McNary, John Day, The Dalles, Hungry Horse, Albeni Falls, Grand Coulee, Chief Joseph, Bonneville,  
2 Cougar, Dexter, Lookout Point, Hills Creek, Blue River, and Fern Ridge dams.

3 38. Defendant Bureau of Reclamation owns, operates and maintains hydroelectric  
4 projects, including Grand Coulee, Roza, Chandler, and Hungry Horse dams.

5 39. Grand Coulee, Roza, Chandler, and Hungry Horse dams are located in bull trout  
6 critical habitat or have an effect on tributaries designated as bull trout critical habitat.  
7

8 40. In its response to Plaintiff's Notice of Intent to Sue, Defendant Bureau of Reclamation  
9 asserts that on April 15, 2015, a biological assessment regarding the Roza and Chandler dams was  
10 submitted to the United States Fish and Wildlife Service and that the United States Fish and Wildlife  
11 Service had determined the biological assessment as "sufficient to initiate formal consultation on bull  
12 trout and bull trout critical habitat."  
13

14 41. Biological opinions have not been issued for Roza or Chandler dams and the dams  
15 continue to be operated by Defendant Bureau of Reclamation.

16 42. Defendant Bureau of Reclamation asserts that in regards to Grand Coulee and Hungry  
17 Horse dams, "Reclamation and other federal action agencies . . . are conferring with the [United States  
18 Fish and Wildlife Service] regarding the [projects'] interaction with bull trout critical habitat.  
19 Defendant Bureau of Reclamation alleges that a biological assessment is "anticipate[d] to be finalized  
20 this fall."  
21

22 43. Biological assessments have not been issued for Grand Coulee or Hungry Horse dams  
23 and the dams continue to be operated by Defendant Bureau of Reclamation.

24 44. Following the designation of bull trout critical habitat in 2010, Defendant Bureau of  
25 Reclamation failed to reinitiate and complete consultation for the continued operation and  
26

1 maintenance of its hydroelectric projects including Roza, Chandler, Grand Coulee, and Hungry Horse  
2 dams.

3 45. Pursuant to Section 7 of the ESA, Defendants must receive a biological opinion from  
4 the United States Fish and Wildlife Service prior to continuing to operate their hydroelectric projects  
5 as delineated above. Without completion of consultation, Defendants cannot ensure that continued  
6 operation of the dams does not adversely modify designated bull trout critical habitat.  
7

### 8 CLAIM FOR RELIEF

#### 9 VIOLATION OF THE ENDANGERED SPECIES ACT

10 46. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint.

11 47. To ensure that there is no adverse modification of bull trout critical habitat, the ESA  
12 requires federal agencies to consult with the appropriate federal agency on actions that may affect a  
13 listed species or its critical habitat. 16 U.S.C. § 1536 (a)(2), 50 C.F.R. § 402.14.  
14

15 48. Bull trout critical habitat may be affected by Defendants' dams, as denoted above.  
16 Defendants must reinitiate and complete consultation pursuant to 50 C.F.R. § 402.16 based on the  
17 October 18, 2010 bull trout critical habitat designation. Defendants must also reinitiate and complete  
18 consultation pursuant to 50 C.F.R. § 402.16 because the 2010 bull trout critical habitat designation  
19 reveals effects of the dams that may affect bull trout critical habitat in a manner or to an extent not  
20 previously considered.  
21

22 49. The Action Agencies' decision to continue to operate and maintain their dams as  
23 delineated above violates the ESA because the Action Agencies did not reinitiate and complete ESA  
24 consultation on the 2010 bull trout critical habitat designation. Defendants are violating ESA § 7(d)  
25 and its implementing regulations 36 C.F.R. § 219, *et seq.*, by their failure to reinitiate and complete  
26 consultation with the United States Fish and Wildlife Service while continuing to operate the dams as

1 delineated above. The Defendants cannot ensure that the continued operation of the dams is not likely  
2 to result in the destruction or adverse modification of bull trout critical habitat.

3  
4 **VII. PRAYER FOR RELIEF**

5 Plaintiff respectfully requests that the Court grant the following relief:

6 A. Order, declare, and adjudge that Defendants have violated the Endangered Species Act  
7 as set forth above;

8 B. Order Defendants to reinitiate and complete consultation under the ESA as described  
9 above;

10 C. Award Alliance its costs, litigation expenses, expert witness fees, and reasonable  
11 attorneys' fees associated with this litigation pursuant to the Endangered Species Act and all other  
12 applicable authorities; and

13 D. Grant Alliance any such further relief as may be just, proper, and equitable.

14 Dated this 11th day of July, 2016.

15  
16 Respectfully submitted,  
17 /s/ Marianne Dugan

18 Attorneys for Plaintiff  
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